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No. 87-1533

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

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GERALD R. DAUGHERTY, *et al.*,
*Petitioners,*

v.

AT&T TECHNOLOGIES, INC., and
COMMUNICATIONS WORKERS OF AMERICA,
*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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## BRIEF IN OPPOSITION FOR RESPONDENT COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

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## TABLE OF CONTENTS


| | Page |
|---|---|
| REASONS FOR DENYING THE WRIT | 1 |
| CONCLUSION | 3 |


## TABLE OF AUTHORITIES

*CASES*


| | |
|---|---|
| *DelCostello v. Teamsters*, 462 U.S. 151 (1983) | 1 |
| *Vaca v. Sipes*, 386 U.S. 171 (1967) | 2 |


*STATUTE*


| | |
|---|---|
| Labor-Management Relations Act of 1947, § 301 | 1 |

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### REASONS FOR DENYING THE WRIT

This is an ordinary "hybrid § 301/fair representation" action brought under § 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185. *See DelCostello v. Teamsters*, 462 U.S. 151, 165 (1983). The petitioners, plaintiffs below, claim that their employer, AT&T Technologies ("AT&T"), has violated its collective bargaining agreement with the Communications Workers of America ("CWA") by transferring the petitioners from New Orleans to New York City, and that the CWA has violated its duty of fair representation by refusing to take the petitioners' grievances to arbitration.

The petition for certiorari makes no attempt to show that this case is worthy of the Court's consideration. Indeed, the petition is taken up entirely with an attempt to show that Art. 13, § 2.91 of the agreement did not authorize AT&T's decision to transfer the petitioners to New York City. That section of the agreement provides that AT&T may select for transfer employees "who have the skills as determined by the Company in the skill category required at the destination location. . . ." Pet. 2-3. The courts below determined, as had the company and the union, that the petitioners' transfer to New York City was authorized by this section of the agreement. Pet. App. 22, 31-32. This Court does not sit to resolve grievances under the AT&T/CWA agreement.

Questions of contract interpretation such as that raised by the petition for certiorari are committed to arbitration by the collective bargaining agreement. An employee covered by this agreement "may seek judicial enforcement of his contractual rights" without exhausting the agreement's grievance and arbitration procedures only if "the employee-plaintiff has been prevented from exhausting his contractual remedies by the union's *wrongful* refusal to process the grievance." *Vaca v. Sipes*, 386 U.S. 171, 185 (1967) (emphasis in original). The petitioners do not even attempt to show that CWA's refusal to arbitrate their grievances was "wrongful." At most, they differ with the union's assessment of the merits of their grievances, Pet. 17-18, but, as *Vaca* holds, that is not sufficient to establish a breach of the fair representation duty. 386 U.S. at 192-193. The petitioners do not challenge the district court's finding that "CWA and AT&T did in fact investigate and ascertain the merits of the plaintiffs' grievances" before deciding not to proceed to arbitration. Thus, not only is the contract question presented by the petition intrinsically unworthy of this Court's attention, it is on its face not judicially cognizable at all.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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